

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OTIS ELEVATOR COMPANY,)	CASE NO. 08 C 1107
)	
Plaintiff,)	JUDGE RONALD A. GUZMAN
)	Magistrate Judge Sidney I. Schenkier
-vs.-)	
)	
EMERSON ELECTRIC COMPANY dba)	
U.S. ELECTRICAL MOTORS, INC., et)	<u>JOINT INITIAL STATUS REPORT</u>
al.,)	
)	
Defendants.)	

Pursuant to Fed.R.Civ.P. 26(f) and this Court's Standing Orders, the parties, represented by Harry D. Cornett, Jr., Thomas W. Baker, and Stephen P. Rouse for Plaintiff Otis Elevator Company ("Otis"), and John W. Bell and William G. Beatty for Defendant Emerson Electric Company dba U.S. Electrical Motors, Inc. ("Emerson") met and conferred by telephone on July 9, 2008 and, in accordance with that meeting, hereby present the following Joint Initial Status Report.

1. Nature of Claims and Counterclaims.

Otis brings this action for recovery of damages resulting from the purchase of submersible elevator motors marketed, sold and supplied by Emerson. The motors contained defective wiring. Otis brings causes of action for breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for particular purpose, negligence, breach of contract, and product liability.

Emerson has not yet answered the Complaint, but will file its responsive pleadings on or before July 15, 2008, pursuant to the deadline set by the Court's latest Order. There are therefore no pending counterclaims or cross-claims as yet.

Emerson, based upon its ongoing investigation into Otis' claims, denies that it is responsible for any alleged defects in the motors. Emerson is investigating whether the subject motors may have been operated in environments whose temperatures exceeded the rated thermal capacity of the motors, along with the possibility that an unauthorized substitution of certain lead wires for the subject motors by a wire distributor may have caused or contributed to the problems allegedly experienced by Otis' customers in the field.

2. Relief Sought by Plaintiff.

Otis seeks damages constituting repair and replacement of all defective motors, labor costs in performing any and all remedial work, lost profits, loss of use, loss of customer goodwill, and business interruption expenses in a total amount that approximates Ten Million Dollars (\$10,000,000.00). Emerson denies that Otis was damaged to the extend claimed, and further denies that Emerson is legally responsible for said damages.

3. Name of Parties Not Served.

Emerson waived service of summons pursuant to Fed.R.Civ.P. 4(d) and entered its appearance through counsel. Additional parties, including a wiring supplier, may be added.

4. List of Pending Motions and Brief Summary of Basis for Motions

There are no motions currently pending.

5. Description of Discovery Requested.

No discovery requests have yet been issued by any party.

6. Types of Discovery Needed.

The parties will take written and oral discovery, including exchanging any responsive electronically stored data within the respective party's possession, custody or control. Subjects on which discovery may be needed include:

- 1) The terms, specifications, and warranties of the transactions among the parties;
- 2) The precise standards and requirements with which the products at issue in this case were to comply;
- 3) The environments in which the subject motors were operated;
- 4) Complaints to Otis from its customers regarding motor performance, along with Otis' investigation of and responses to said complaints;
- 5) The nature, characteristics and performance of lead wire components provided to Emerson by its wire supplier;
- 6) Otis' damages, including all documentation associated therewith.

7. Agreed Dates for Rule 26(a)(1) Disclosures, Pleading Amendments, Joinder of Parties, Fact Discovery Completion, Expert Discovery Completion (including dates for the delivery of expert reports), Filing of Dispositive Motions.

The parties agree on the following deadlines:

- (a) Pleadings amended and parties joined no later than September 15, 2008;
- (b) Rule 26(a)(1) disclosures shall be made by August 15, 2008;
- (c) All fact discovery will be completed by March 27, 2009; and
- (d) Expert disclosures, in accordance with Fed.R.Civ.P. 26(a)(2), for any issue upon which a party bears the burden of proof, shall be made by April 27, 2009;
- (e) Responsive expert disclosures, in accordance with Fed.R.Civ.P. 26(a)(2), shall be made by June 1, 2009;
- (f) Rebuttal expert disclosures, in accordance with Fed.R.Civ.P. 26(b)(2), shall be made by June 30, 2009;
- (g) Expert discovery shall be completed by August 21, 2009; and

(h) Dispositive motions shall be filed September 25, 2009.

8. Disclosure or discovery of electronically stored information.

The parties have agreed to conduct necessary searches for electronically stored information (“ESI”) by a central key word search of their responsive e-mail services. The parties continue to work to establish the parameters of ESI discovery and will timely submit their agreed-upon protocol to the Court as an addendum to this Joint Initial Status Report.

9. Estimation of When the Case will be Ready for Trial.

The parties anticipate that the case will be ready for trial in December 2009.

10. Probable Length of Trial.

The trial will likely take two to three weeks to complete.

11. Settlement Discussions.

There have been no settlement discussions as yet, but the parties are presently conducting an ongoing joint investigation into the claims asserted by Otis in its Complaint. The parties will inform the Court should discussions progress to the point settlement conference would be productive.

Respectfully submitted,

s/Thomas W. Baker
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